

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHELLE L. FARRA

Claimant

VS.

MERCY HOSPITAL

Respondent

Self-Insured

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Docket No. 1,005,822

ORDER

Claimant appealed the December 19, 2003 preliminary hearing Order entered by Administrative Law Judge (ALJ) Jon L. Frobish.

ISSUES

Claimant requested a preliminary hearing to obtain an order for additional medical treatment of her alleged psychiatric disorder.¹ Judge Frobish denied claimant's request for ongoing medical treatment. But because claimant was on medication, the ALJ authorized ". . . one final visit with Dr. Reddy to provide the [c]laimant with directions about safely tapering off her psychiatric drugs and one final psychotherapy visit with her therapist for a final session to deal with termination and closure issue."² Claimant contends Judge Frobish erred. Claimant argues the ALJ exceeded his jurisdiction and authority by finding claimant did not suffer a psychiatric injury and failing to authorize ongoing psychiatric treatment.

Respondent contends that the Appeals Board (Board) does not have jurisdiction to hear this appeal, but if the merits of claimant's appeal are reached then the ALJ's Order

¹ Letter of Intent to Mercy Hospital from Patrick C. Smith (Oct. 6, 2003).

² Order (Dec. 19, 2003).

should be affirmed because “. . . claimant had no psychological or psychiatric injury that occurred at work that required additional medical treatment.”³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The issue raised by claimant is subject to review from a preliminary hearing order. The ALJ's Order should be reversed.

This is an appeal from a preliminary hearing order. By statute, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.⁴ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.⁵

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide necessary medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a

³ Respondent's Brief at 2 (Feb. 9, 2004).

⁴ K.S.A. 44-551(b)(2)(A).

⁵ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁶

Claimant argues that the ALJ exceeded his jurisdiction by failing to authorize a doctor to treat her psychological disorder. At a preliminary hearing, a judge has the authority to determine whether an injured worker is in need of additional medical treatment.⁷ Since only jurisdictional issues are subject to review in an appeal from a preliminary hearing, the Board has, in previous cases, held that the ability to directly trace psychological or psychiatric injury to a physical injury concerns only the nature and extent of the disability. The existence of such relationships are, therefore, a step removed from the jurisdictional milieu, and have no bearing upon the compensability of the claimant's accident and injury. The Board has, for this reason, declined to review the question at this stage of the proceedings.⁸ However, the Board now considers this analysis was wrong.

The question of whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Stated another way, it gives rise to a disputed issue of whether the injury, in this case a psychological condition, arose out of and in the course the employment. The Board's jurisdiction should not rest on whether the injury is physical versus mental or emotional. Furthermore, making such a distinction can have the undesired effect of delaying needed treatment. Accordingly, the Board finds it has jurisdiction of this appeal on the limited question of whether claimant has a psychological condition that is directly traceable to her work-related accident and the resulting physical injury.

The ALJ found that claimant did not suffer a work-related "psychiatric impairment" and agreed "... with the diagnosis of Dr. Hughes that the [c]laimant has malingered psychiatric complaints."⁹ As a result, the ALJ determined that claimant was not in need of additional medical treatment. Claimant's treating psychotherapist, Teri Sutherlin and her treating psychiatrist, Dr. V. J. Reddy disagree with Dr. Hughes. Their joint letter of October 1, 2003 states that claimant is in need of continued psychiatric treatment including medication and therapy.

We received a letter dated 8/14/03 from Dr. Patrick Hughes regarding the diagnosis and treatment of Michelle Farra. This report was thoroughly reviewed and we disagree with the findings that Mrs. Farra does not have a psychiatric disorder that requires on-going treatment. We find the comments about the causative factor to

⁶ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁷ K.S.A. 44-551 and K.S.A. 44-534a.

⁸ See e.g. *Eaton v. Coleman Company, Inc.*, No. 205,158, 1998 WL 695373 (Kan. WCAB Sept. 21, 1998); *Gilman v. Olathe Medical Center*, No. 211,937, 1997 WL 377940 (June 18, 1997).

⁹ Order (Dec. 19, 2003).

be inaccurate and disagree with this also. The chronology of the events reported points toward her psychiatric symptoms being related to her injury sustained at work. These symptoms have been somewhat resistant to intervention, but she is responding to medication and therapy and it is not in the client's best interest to stop therapy or medication. Her functioning is severely impaired at this time and she will not be able to return to work at this time. The prognosis for her being able to return to work within the next year is guarded, but we will continue to work with her to improve her functioning and return her to an optimal level.¹⁰

The Board finds it has the jurisdiction to review the issues of whether claimant has a psychiatric/psychological condition and, if so, whether it arose out of her employment. Based on the record compiled to date, the Board finds that claimant has a psychiatric condition that is directly traceable to her work-related injury.

WHEREFORE, the Appeals Board reverses the Order entered December 19, 2003 by Administrative Law Judge Jon L. Frobish.

IT IS SO ORDERED.

Dated this ____ day of May 2004.

BOARD MEMBER

c: Patrick C. Smith, Attorney for Claimant
Leigh C. Hudson, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹⁰ P.H. Trans., Cl. Ex. 1.